

(26,620)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1918.

No. 534

THE GRAND TRUNK WESTERN RAILWAY COMPANY,  
APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

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1 I.—*Petition.* Filed September 8, 1913.

In the United States Court of Claims.

Number 32589.

THE GRAND TRUNK WESTERN RAILWAY COMPANY

VS.

THE UNITED STATES.

*Petition.*

To the Chief Justice and Judges of the Court of Claims:

Your petitioner respectfully shows:

I.

Petitioner is a corporation, duly organized under the laws of the State of Michigan, and for a number of years has been engaged in general railroad business, carrying mails for the United States, and in operating the line of road between Port Huron and Flint, in the State of Michigan, as is hereinafter particularly detailed.

II.

Section I of the Act of Congress approved June 3, 1856 (11 Stat., 21), enacts:

2 "That there be and hereby is granted to the State of Michigan, to aid in the construction of railroads \* \* \* from Grand Haven and Pere Marquette to Flint, and thence to Port Huron, every alternate section of land designated by odd numbers; for six sections in width on each side of each of said roads; \* \* \* which lands \* \* \* shall be held by the State of Michigan for the use and purpose aforesaid \* \* \* Provided further, That the lands hereby granted shall be exclusively applied in the construction of that road for and on account of which such lands are hereby granted, and shall be disposed of only as the work progresses, and the same shall be applied to no other purpose whatsoever." \* \* \*

Sections 3, 4, and 5 of the Act are as follows:

"Sec. 3. And be it further enacted, That the said lands hereby granted to the said State, shall be subject to the disposal of the legislature thereof, for the purposes aforesaid and no other; and the said railroads shall be and remain public highways for the use of the government of the United States, free from toll or other charge upon the transportation of any property or troops of the United States.

"Sec. 4. And be it further enacted, That the lands hereby granted to said State shall be disposed of by said State only in manner follow-

ing, that is to say: That a quantity of land not exceeding one hundred and twenty sections for each of said roads, and included within a continuous length of twenty miles of each of said roads, may be sold; and when the governor of said State shall certify to the Secretary of the Interior that any twenty continuous miles of any

3 of said roads is completed, then another quantity of land hereby granted, not to exceed one hundred and twenty sections for each of said roads having twenty continuous miles completed as aforesaid and included within a continuous length of twenty miles of each of such roads may be sold; and so from time to time until said roads are completed; and if any of said roads is not completed within ten years no further sales shall be made, and the lands unsold shall revert to the United States.

"Sec. 5. And be it further enacted, That the United States mail shall be transported over said roads, under the direction of the Post-Office Department, at such price as Congress may, by law, direct: Provided, That until such price is fixed by law, the Postmaster-General shall have the power to determine the same."

### III.

By the Act of February 14, 1857 (Mich. Laws No. 126), the Act of Congress of June 3, 1856, was accepted. Section 1 of the Michigan Act is as follows:

"Sec. 1. The people of the State of Michigan Enact. That the lands, franchises, rights, powers and privileges granted to and conferred upon the State of Michigan, by an Act of Congress entitled, "An Act making a grant of alternate sections of the public land to the State of Michigan to aid in the construction of certain Rail Roads in said State and for other purposes approved June third (3) Eighteen hundred and Fifty-six (1856), be and the same are hereby accepted with the restrictions and upon the terms and conditions contained in said Act of Congress."

4 Section 2 of the Michigan Act, so far as it relates to this case, is as follows:

"So much of the aforesaid lands, franchises, rights, powers, and privileges as are or may be granted and conferred, in pursuance of said Act of Congress, \* \* \* to aid in the construction of a railroad from Grand Haven to Flint, and thence to Port Huron, are hereby vested fully and completely in the Detroit and Milwaukee Railway Company, and in the Port Huron and Milwaukee Railway Company, in the manner following, to wit: So much of said lands as pertain or attach to said route from Grand Haven to Owosso in the County of Shiawassee, are hereby vested fully and completely in the Detroit and Milwaukee Railway Company, and so much of said lands as pertain or attach to said route from Owosso to Flint, and thence to Port Huron, are hereby vested fully and completely in the Port Huron and Milwaukee Railway Company, to aid in the construction of the roads of said companies respectively; in like manner all the lands, franchises, rights, powers, and privileges which are, or may be granted and conferred, in pursuance of said Act of Congress, to aid in the construction of a railroad from Pere Marquette to Flint, and thence to Port Huron, are hereby vested fully and completely in the



Flint and Pere Marquette Railway Company, and in the Port Huron and Milwaukee Railway Company, according to the provisions of the Act of Congress relating thereto and the direction of the Board of Control hereby appointed; \* \* \* All and each of the several railroad companies mentioned in this section shall be subject to all the conditional restrictions and obligations imposed upon them by this Act as hereinafter provided."

5 Sections 3, 5, and 6 of the Michigan Act are as follows:

"Sec. 3. The lands, franchises, rights, powers and privileges, hereby conferred upon and vested in said Rail Road companies, or either of them shall be exclusively applied in the construction of their respective lines of rail road, as above designated, and said lands shall be applied to no other purposes whatsoever; and each and every one of said rail roads, when completed, shall, in all respects, and in all its parts, be a first class rail road; and the rail thereof shall be the T or continuous rail.

"Sec. 5. Each and every one of said rail road companies is required, by a vote of a majority of the directors thereof to accept the lands, franchises, rights, powers, and privileges hereinbefore conferred; which acceptance shall be embodied in a written instrument, signed by the president, and attested by the secretary and corporate seal of said company; and in such acceptance, each of said companies shall severally assent and agree to the provisions and requirements of this act, which acceptance shall be filed in the office of the Secretary of State of Michigan, within sixty days after the passage of this Act.

"Sec. 6. It shall be the duty of each of said rail road companies on or before the first day of December next, to locate the line of its railroad, and to make complete maps of said line, and to file copies of such maps in the offices of the Governor and Secretary of State of Michigan; and it shall be the duty of the Governor after affixing his official signature to the duplicate map of each of said roads, to file them in the department having control of the public lands in the city of Washington; said lines so located shall not be considered absolutely final further than to fix the limits and boundaries within which said lands may be selected, but said company shall have the right to make alterations thereof when necessary to improve said line. Provided, Such alteration shall not materially change or alter such road."

6 So much of Section 8 of that Act as is applicable to this case reads as follows:

"For the purpose of securing the construction of the aforesaid railroads, within the time limited, and in the manner prescribed in this act, and for the purpose of properly managing and disposing of the lands appropriated to aid in the construction thereof, the Governor of the State of Michigan, together with six commissioners, to be nominated by the Governor and confirmed by the Senate, are hereby constituted a board of control of the same, whose duty it shall be to manage and dispose of such lands in aid of the construction of the aforesaid railroads, in the manner in this act provided, and to do any and all other acts necessary and proper respecting the construction and building of said railroads, which shall be prescribed by law;"

\* \* \*

Sections 11, 16, and 20 of the Michigan Act read as follows:

"Section 11. Should either of said railroad companies fail to accept said lands on the terms of this act, within sixty days, or fail to make the survey and maps by the first day of December next, or fail to construct its entire line of road or any part thereof, in the time and manner required, in such case said board of control shall have  
7 the power, and it is hereby made their duty, to declare said lands, so far as they have not been sold in good faith forfeited to the State, and said Board of Control are hereby required to confer said lands upon some other competent party, under the general regulations and restrictions of this act.

"Section 16. Said railroad companies shall take said grants of lands with the conditions imposed, and incumbrances specified in this act, and shall in no court have any claim or recourse whatever upon the State of Michigan, for a misapplication of said grants, or for any of the incumbrances, or conditions in this act imposed.

"Section 20. In consideration of the grants of land and other privileges hereby conferred on each of the several railroad companies mentioned and named in section two of this act the said several railroad companies are hereby required within sixty days from and after the first day of each and every year, to pay into the treasury of this State, as a specific annual tax, one per cent. upon the cost of the road and its equipments and appurtenances, of whatever kind, and it shall be lawful for the Legislature of this State, in their discretion, after ten years, to impose upon either or each of said railroad companies the payment of a further tax upon the gross or total earnings of such road of not exceeding two per cent; which said above several taxes shall be in lieu of all other taxes to be imposed within this State, Provided That the provisions of this section shall not apply to railroad companies, in the upper peninsula of this State until after ten years from the passage of this act. Provided also, That the aforesaid additional tax of two per cent. shall be imposed upon the Detroit and Milwaukee railway company and the Port Huron and Milwaukee railway company,  
8 only in proportion to the amount of land which they shall respectively receive in comparison with the quantity of lands received by the other railroad companies, which proportion shall be settled by the board of control."

#### IV.

Within sixty days after the passage of the Michigan Act of February 14, 1857, that being the period limited by Section 5 of that Act, the Detroit & Milwaukee Railway Company and the Port Huron & Milwaukee Railway Company each filed in the office of the Secretary of State of Michigan an attempted acceptance of the Act, which was embodied in a written instrument signed by the president, and attested by the secretary and corporate seal of each company, in which each company severally assented and agreed to the provisions and requirements of the Act with the exception that each company protested against Section 20 of the Act and refused its assent to the provisions of that section. Thereupon, August 26, 1857, the Board of Control of Railroads, that had been created pursuant to the Michigan Act of 1857, declared that the public lands were forfeited as to those com-

panies and re-vested in the State of Michigan for the purposes in the Act of Congress expressed. The Board of Control made that declaration of forfeiture pursuant to the provisions of Section 11 of the Michigan Act of February 14, 1857.

The Board of Control was continued in office until June 3, 1866, by the terms of the Michigan Act of March 19, 1863, Number 153, and the Board was continued and perpetuated indefinitely by the Michigan Act of March 21, 1865, Number 318.

## V.

The location of the Port Huron & Milwaukee Railway Company was filed in the General Land Office, Department of the Interior, December 9, 1857, and June 3, 1863, the Secretary of the Interior certified to the Governor of Michigan 30,998.76 acres for the Detroit & Milwaukee Railway Company. Those tracts lie in the region westerly of Flint, Michigan. April 2 and November 1, 1864, 6,468.68 acres were certified by the Secretary of the Interior to the Governor of Michigan for the Port Huron & Milwaukee Railway Company. Those lands lie to the north and to the south of the road afterwards constructed between Port Huron and Flint. No such location was ever made or filed anywhere by the Port Huron and Lake Michigan Railway Company.

## VI.

The Port Huron & Lake Michigan Railway Company was organized pursuant to the Michigan Act of January 30, 1847 (Mich. Laws, 1847, p. 5). That Act was amended by one approved February 13, 1855 (Mich. Laws, 1855, p. 368). The company filed its acceptance of the amendatory act, as required by its terms, in the office of the Secretary of State, April 11, 1855. That company was incorporated to construct and operate a road from Port Huron, Michigan, to a point on Lake Michigan at or near the mouth of Grand River in that State. (Mich. Laws, 1847, p. 5.)

That company commenced laying track at Port Huron and thence westerly in the summer of 1869. Its road was built from Port Huron to Lapeer by June 8, 1871. The rails were laid to Flint before November 16, 1871, and it was completed and in operation from Port Huron to Flint December 12, 1871.

The road was constructed from Port Huron to Flint without the aid or benefit of a public land grant in any manner or form, directly or indirectly, from the United States or from the State of Michigan, and without such aid or benefit having been applied for or requested by the company in any manner or form, directly or indirectly.

May 1, 1869, the Port Huron & Lake Michigan Railway Company mortgaged its property to the Union Trust Company, of New York, Trustee, to secure the payment of its bonds in a large amount. The mortgage covered the line from Port Huron through Lapeer and Flint to Lansing, Michigan, a distance of one hundred and fifteen miles. The mortgage did not assert or claim or allude to

a public land grant of any kind or from any source, and the bonds secured by the mortgage were sold to purchasers without the aid or benefit of a public land grant of any kind or from any source being asserted, claimed, or even alluded to, directly or indirectly. As a matter of fact, no public land grant of any kind, manner, or form, or from any source whatever, was in contemplation by the company when it executed that mortgage or when its bonds were sold to their purchasers.

That mortgage was foreclosed in July, 1878, and the road from Port Huron to Flint was bought in at the sale June 31, 1879, by purchasers who conveyed it to the Northwestern Grand Trunk Railway Company, which thus became the owner of the road from Port Huron to Flint.

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## VIII.

November 18, 1871, the Board of Control resolved of and concerning the lands that had been certified previously by the Secretary of the Interior to the Governor of Michigan for the Detroit & Milwaukee Railway Company and the Port Huron & Milwaukee Railway Company that if said lands or any portion of them can be lawfully appropriated to said Port Huron & Lake Michigan Railway Company for the purpose of aiding in the construction of the road in the Act of Congress and in the Michigan Act mentioned, subject to the restrictions of the Act of Congress, that the same should and of right ought to be done. That resolution was passed just as the road was being completed into Flint, as before stated. Nothing further was done in the matter until May 1, 1873, when the Port Huron & Lake Michigan Railway Company presented to the Board of Control its memorial asking that the Board would confer upon it and its successors all and whatever interest the State then had in the lands granted by the Act of Congress of June 3, 1856, to the State of Michigan to aid in the construction of a railroad from Grand Haven to Flint and thence to Port Huron. Thereupon the Board of Control resolved to designate that company as the proper company to receive that grant and that it release to and confer upon that company, its successors, and assigns, all and every right, title, and interest remaining in the State of Michigan in and to the lands, be the same more or less, for the purpose of constructing and completing the road.

Thereafter, May 30, 1873, the Governor of Michigan executed a paper purporting to be a patent, in which he undertook to release to and confer upon the Port Huron & Lake Michigan Railway Company, its successors and assigns, all and every right, title, and interest "which now remains in or which may at any time hereafter for the purposes contemplated by said Act of Congress accrue to the said State of Michigan in and to said lands referred to and described in said resolutions of said Board of Control of Railroad Lands for the purpose of constructing or aiding in constructing and building their said road."

The lands described in the patent aggregate 30,303.05 acres as

"Detroit & Milwaukee," and aggregate 6,428.68 acres as "Port Huron & Milwaukee." The company executed a certificate accepting the patent May 30, 1873, but it was not filed with the Secretary of State until May 25, 1875. At the time of the execution of that patent the road had been completed and in operation from Port Huron to Flint more than seventeen months.

In the year 1873, the Port Huron & Lake Michigan Railway Company was not intending to construct a line from Grand Haven to Owosso, or from that point to Flint, and it was not intending to use the lands that the Governor of the State endeavored or undertook to convey to the company by his patent of May 30, 1873. After the execution of that patent, litigation arose in the Courts of the State concerning its validity and concerning the validity of the acts of the Board of Control on which the patent was based, and the acts of the Board and the patent of the Governor were held to be unlawful and invalid.

It was found as a fact in *Bowes v. Haywood*, 35 Mich., 241, decided January Term, 1877, that there was "no evidence, claim, or pretense that such company contemplated building any road on the route from Grand Haven to Owosso."

In *Fenn v. Kinsey*, 45 Mich., 446, March Term, 1881, the Supreme Court of Michigan, in considering the patent made by the Governor, stated it as a fact: "At this time this company had neither built nor intended to build any road west of Owosso, and had actually built nothing west of Flint, but had built sixty miles between Flint and Port Huron." The facts were and are as is stated in the two opinions cited and quoted from, and it is also the fact that no railroad between Owosso and Flint has ever been built by any company.

April 13, 1874, the Governor of Michigan certified to the Secretary of the Interior the completion of sixty miles of road between Port Huron and Flint, but it is true, as before stated herein, that the construction of the road between those points was completed December 12, 1871, and without any assertion, claim, or expectation of aid or benefit from public land grants, and without any aid or benefit therefrom, directly or indirectly, in any manner or form.

## IX.

The Michigan Act of May 14, 1877, is as follows:

"Section 1. The People of the State of Michigan enact, That the action of the Board of Control of Railroads on the first day of May, 1873, in conferring upon the Port Huron and Lake Michigan railroad company certain lands, granted by the Congress of the United

States to the State of Michigan June 3d, 1856, to aid in the construction of a railroad from Grand Haven and Pere Marquette to Flint, and thence to Port Huron, is hereby ratified and confirmed, with like force and effect as if said board had, at the time of its said action, due and full authority in that behalf; Provided, however, that nothing in this act shall impair or effect any

valid right or interest heretofore acquired by any individual or corporation in said lands, or any part thereof.

"Section 2. The action of the Governor of this State in conveying said lands to the Port Huron and Lake Michigan railroad company, on the (30th) thirtieth day of May, 1873, in pursuance of the act of said Board of Control of Railroads is hereby ratified and confirmed, and said conveyance shall be deemed to be of full force and effect from the date thereof."

In *Fenn v. Kinsey*, 45 Mich., 446, January Term, 1881, the Supreme Court of Michigan held the above quoted act to be unconstitutional and void.

In *Rogers v. Port Huron & Lake Michigan Ry. Co.*, 45 Mich., 460, January Term, 1881, the Supreme Court of Michigan held that the State could not make disposition of the lands granted by Congress in such manner as the State saw fit, but that the disposition could only be with the purposes and on the conditions prescribed by Congress, and that the acceptance of the Act of 1857 was the only act whereby any of the companies was brought into contract relations with the State at all. "The law did not assume to force the grant upon any company, and the contract could not bind either party until both assented to the same agreements and conditions." This decision considers at length the Act of 1857, the actions of the Board

of Control in forfeiting the lands, and also considers the Constitution of the State and the Act of Congress of June 3, 1856.

March 3, 1879, the Congress of the United States passed a joint resolution (20 Stat., 490), which reads as follows:

"Be it resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the United States hereby releases to the State of Michigan any and all reversionary interest which may remain in the United States in such of the lands granted to, and acquired by the said State of Michigan by act of Congress of June third, eighteen hundred and fifty-six, and certified to the said State in accordance with the said act, as were granted to aid the construction of the road from Grand Haven to Flint, and thence to Port Huron. This release shall not in any manner affect any legal or equitable rights in said lands, which have been acquired, but all such rights shall be and remain unimpaired."

The Michigan Act of June 9, 1881, Number 263, is as follows:

"Section 1. The People of the State of Michigan enact, That the action of the board of control of railroads on the first day of May, eighteen hundred and seventy-three, in conferring upon the Port Huron and Lake Michigan railroad company certain lands granted by the congress of the United States to the State of Michigan, June third, eighteen hundred and fifty-six, to aid in the construction of a railroad from Grand Haven and Pere Marquette to Flint and thence to Port Huron, as to all of such lands as are situated north and south of the railroads constructed from Port Huron to Flint, is hereby ratified and confirmed, with like force and effect as if said board had at the time of its action due and



full authority in that behalf; and as to such of said lands above mentioned as have been conveyed by said company, the title, so far as the State of Michigan is empowered to act in the premises, is hereby vested in such purchase from said company: Provided, however, That nothing in this act shall impair or effect any valid right or interest heretofore acquired by any individual, corporation, or other party in said lands or any part thereof.

"Sec. 2. The Port Huron and Lake Michigan railroad company having heretofore constructed its road from Port Huron to Flint upon the line contemplated by the act of congress granting said lands to the State of Michigan, and said State having since acquired by an act of Congress, approved March third, eighteen hundred and seventy-nine, all the reversionary claim and interest of the United States in said lands, the action of the governor of this State in conveying said lands so situated as aforesaid to the Port Huron and Lake Michigan railroad company on the thirtieth day of May, eighteen hundred and seventy-three, in pursuance of the act of said board of control of railroads, is hereby ratified and confirmed, and such conveyance as to said land shall be deemed to be of full force and effect from the date thereof, and all deeds and conveyances heretofore executed by the Port Huron and Lake Michigan Railroad Company, or by the officers or trustee of said company, of the lands hereinbefore mentioned, situate north or south of the road from Port Huron to Flint, shall be deemed to be of full force and effect from the date thereof, and all of the title to the above described

lands acquired by the State of Michigan by the act of Congress of June third, eighteen hundred and fifty-six, and the subsequent act of March third, eighteen hundred and seventy-nine, to so much of said lands as has been conveyed by said Port Huron and Lake Michigan Railroad Company, is hereby vested in the grantees of said company, and to the rest and residue of said lands is vested in said company, its successor or assigns. All of said lands however to be subject to the payment of all taxes heretofore assessed thereon."

## X.

The road from Port Huron to Flint was sold on foreclosure sale to the Northwestern Grand Trunk Railway Company June 21, 1879, as before stated. The Chicago & Grand Trunk Railroad Company was formed afterwards, April 8, 1880, by the consolidation of the various lines owning the road between Port Huron and Chicago, including the road between Port Huron and Flint. The consolidated company became the owner of the road from Port Huron through Flint to Lansing, and thence to Chicago, Illinois. That company placed a mortgage on its road, which mortgage was foreclosed and the road sold thereby October 31, 1900, to a purchasing company, and the title to the road was then transferred to a consolidated company under the name of the Grand Trunk Western Railway Company, which is the petitioner, and it still owns the road.

In none of the mortgages herein mentioned, in none of the de-

crees of sale, and in none of the sales were described or specified public land grants of any kind or character or public lands of any kind or character granted to the State of Michigan by the United States to aid in the construction of railroads, or public lands

18 granted in any manner or form by the State of Michigan.

On the contrary, none of the mortgages, decrees, or sales asserted or claimed or alluded to a public land grant of any kind or from any source, and the bonds secured by the respective mortgages were sold to purchasers without public land grants of any kind or any source being asserted, claimed, or even alluded to, directly or indirectly.

## XI.

As hereinbefore stated, Section 5 of the Act of Congress of June 3, 1856, is as follows:

"And be it further enacted, That the United States mail shall be transported over said routes, under the direction of the Post Office Department, at such price as Congress may, by law, direct: Provided, That until such price is fixed by law, the Postmaster General shall have the power to determine the same."

And Section 13 of the Act of July 12, 1876, is as follows:

"That railroad companies whose railroad was constructed in whole or in part by a land grant made by Congress on the condition that the mail, should be transported over their road at such price as Congress should by law direct shall receive only eighty per centum of the compensation authorized by this Act."

19 From the time of the establishment of Route 12,522, from Port Huron to Lapeer, in 1871, and the establishment of that route as from Port Huron to Flint, in January, 1872, the mails have been carried over the route between Port Huron and Flint by the respective companies owning it and the Department at various times has changed the numbers of the route to 24,039 and then to 137,039, the name of the railroad company owning the road between those points being given in those designations. After the petitioner became the owner of the road the route was continued as 137,039 and it still bears that number. From the time of the establishment of Route 12,522, from Port Huron to Lapeer, in 1871, and the establishment of that route as from Port Huron to Flint, in January, 1872, on down to November 27, 1912, the road from Port Huron to Flint and each and every part thereof was continuously and uniformly treated, considered, and held by the Department in its orders stating the route and its termini, and fixing the pay for carrying of the mails, and its distance circulars and contracts for the carrying of mails, and in its full payments without deduction to the various companies for carrying the mails, as a non land aided or non land grant road. During all of that time there was an unbroken and continuous chain of acts and conduct by the Department and its officials declaring that neither the whole nor any part of the road between Port Huron and Flint was land



aided in its construction, or was a land grant or land aided road in any manner or form or in any respect.

In the report of the Postmaster General for 1883, the officials of the Department began the practice, which they continued until 1912, of stating the names of the roads that had been aided wholly or partially in their construction by land grants. In none of those reports has the road or the route between Port Huron and Flint been stated as land aided or as a land grant road, either wholly or partially.

As before stated, Section 3 of the Act of Congress of June 3, 1856 (11 Stat., 21), is as follows:

"And be it further enacted, That the said lands hereby granted to the said state, shall be subject to the disposal of the legislature thereof, for the purposes aforesaid and no other; and the said railroads shall be and remain public highways for the use of the Government of the United States, free from toll or other charge upon the transportation of any property or troops of the United States."

From the time the operation of the road between Port Huron and Flint was begun, December 12, 1871, until sometime in the year 1912, the War Department uniformly and continuously treated and dealt with the various companies owning that road on the theory of fact and law that it was not a land aided or a land grant road, wholly or partially, and all its payments for the transportation of any property or troops of the United States were upon the theory of fact and law that the road was not a land aided or a land grant road, but full compensation was paid by the United States, through the War Department, to the various companies owning that road, as to a non land aided or non land grant road, for such transportation of any property or troops of the United States.

Petitioner, when it acquired the title to the road between Port Huron and Flint, as hereinbefore stated, took it with knowledge of the fact that it had not been treated, considered, or held by the Post Office Department, or by the War Department, as a land grant or a land aided road, and in the full belief that it was not in fact or in law a land grant or land aided road; and with knowledge of the fact that from the time the United States began the carriage of the mails and the transportation of troops and property of the United States, over the road between Port Huron and Flint in January, 1872, on down to the time when petitioner acquired the title to the road, the Post Office Department had paid to the several companies owning the road the full compensation allowed by law for the carrying of mails, and without any deduction as a land aided road, and that the War Department had made full payments as before stated.

Immediately upon acquiring title to that road petitioner began carrying the mails, the troops, and the property of the United States over it, and from that time until this time its officials have believed, and still believe, that the road between Port Huron and Flint was not and is not a land grant or land aided road. During all that time, and until in the year 1912, the continuous and uniform conduct of the Post Office Department and of the War Department, and

the business transactions of the United States with petitioner through those Departments, were all based upon and in full harmony with the theory of fact and law that the road was not a land grant or land aided road. During all that time, and until in the year 1912, the Post Office Department and the War Department paid petitioner full compensation for carrying the mails, the property, and the troops of the United States over that road between Port Huron and Flint, and without making any deductions, as if it were a land grant or a land aided road.

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## XII.

Early in the year 1912 the War Department requested the comptroller of the Treasury for an advance or advisory decision as to whether or not the road between Port Huron and Flint was a land aided or land grant road, and March 29, 1912, the Comptroller rendered a decision in which he held that it was a land grant road and on further consideration, August 30, 1912, the Comptroller rendered a decision in which he affirmed the former one. Pursuant to that ruling, and on that account, November 27, 1912, the Postmaster General issued orders concerning Route 137,039, in which it was stated that the road from Port Huron to Flint was a land grant road, and such orders prescribed the rates of compensation for carrying the mails thereafter at eighty per cent. of the compensation authorized by law to be paid non land grant or non-land aided roads. Thereafter, the Postmaster General re-stated the compensation for carrying the mails by petitioner from October 1, 1900, to October 31, 1912, and he has deducted and withheld from petitioner, to wit: \$52,566.87. Petitioner filed its claim with the Auditor for the Post Office Department for the amount of, to wit: \$52,566.87, as due to it for the transportation of the mails from November 1, 1912, to June 30, 1913, but the Auditor for that Department disallowed the claim. Petitioner then appealed the case to the Comptroller of the Treasury who, August 20, 1913, affirmed the action of the Auditor in the premises. There have been no other departmental actions in the matter, and the claim has not been paid.

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## XIII.

Petitioner is the sole owner of this claim; no assignment or transfer of the claim or any part thereof, or interest therein, has been made; and there are no just credits or set-offs against the claim.

Wherefore petitioner prays judgment against the United States for the sum of Fifty-two thousand, five hundred and sixty-six dollars and eighty-seven cents (\$52,566.87).

DUDLEY & MICHENER,  
*Attorneys of Record.*

L. C. STANLEY,  
H. J. FINLEY,  
*Counsel.*

DISTRICT OF COLUMBIA, ss:

Personally appeared before me, a Notary Public in and for the District aforesaid, Louis T. Michener, who, being duly sworn according to law, deposes and says that he is one of the firm of Dudley & Michener, duly authorized and empowered by a power of attorney executed by the petitioner; that he has read and understands the foregoing petition and that the matters and things therein set forth are true in substance and in fact, as he is informed and believes.

LOUIS T. MICHENER.

Subscribed and sworn to before me this 8th day of September, A. D. 1913.

E. L. WHITE,  
Notary Public, D. C.

[SEAL.]

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## II.—*General Traverse.*

Court of Claims.

No. 32589.

THE GRAND TRUNK WESTERN RAILWAY COMPANY

vs.

THE UNITED STATES.

No demurrer, plea, answer, counterclaim, set-off, claim of damages, demand, or defense in the premises, having been entered on the part of the defendants, a general traverse is entered as provided by Rule 34.

## III.—*Argument and Submission of Case.*

On April 25, 1918, the case was argued by Mr. L. T. Michener, for the claimant, and continued by Mr. Chas. F. Jones, for the defendants. On April 26, 1918, the argument was continued by Messrs. Chas. F. Jones and J. Robert Anderson, for the defendants, concluded by Mr. Theodore D. Halpin, for the claimant, and the case was submitted.

## 25 IV.—*Findings of Fact, Conclusion of Law, and Opinion of the Court by Campbell, Ch. J. Filed May 27, 1918.*

This case having been heard by the Court of Claims, the court, upon the evidence, makes the following

*Findings of Fact.*

## I.

Plaintiff is a corporation, duly organized under the laws of the State of Michigan, and for a number of years has been engaged in general railroad business, carrying mails for the United States, and in operating the line of road between Port Huron and Flint, in the State of Michigan, as is hereinafter particularly detailed.

## II.

Sections 1, 2, 3, 4, and 5 of the act of Congress approved June 3, 1856 (11 Stat. L., 21), read as follows:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there be and hereby is, granted to the State of Michigan, to aid in the construction of railroads from Little Bay de Noquet to Marquette, and thence to Ontonagon, and from the two last-named places to the Wisconsin State line; and also from Amboy, by Hillsdale and Lansing, and from Grand Rapids to some point on or near Traverse Bay; also from Grand Haven and Pere Marquette to Flint, and thence to Port Huron, every alternate section of land designated by odd numbers; for six sections in width on each side of each of said roads: but in case it shall appear that the United States have, when the lines or routes of said roads are definitely fixed, sold any section or any part thereof granted as aforesaid, or that the right of pre-emption has attached to the same, then it shall be lawful for any agent or agents, to be appointed by the governor of said State, to select, subject to the approval of the Secretary of the Interior, from the lands of the United States nearest to the tiers of sections above specified, so much land in alternate sections or parts of sections as shall

be equal to such lands as the United States have sold or otherwise appropriated, or to which the right of preemption has attached as aforesaid, which lands (thus selected in lieu of those sold, and to which preemption rights have attached as aforesaid, together with the sections and parts of sections designated by odd numbers as aforesaid, and appropriated as aforesaid) shall be held by the State of Michigan for the use and purpose aforesaid: Provided, That the lands to be so located shall in no case be further than fifteen miles from the lines of said roads and selected for and on account of each of said roads: Provided further, That the lands hereby granted shall be exclusively applied in the construction of that road for and on account of which such lands are hereby granted, and shall be disposed of only as the work progresses, and the same shall be applied to no other purpose whatsoever: And provided further, That any and all lands heretofore reserved to the United States by any act of Congress, or in any other manner, by competent authority, for the purpose of aiding in any object of internal improvement, or for any other purpose whatsoever, be, and the same

are, hereby reserved to the United States from the operations of this act, except so far as it may be found necessary to locate the routes of said railroads through such reserved lands, in which case, the right of way only shall be granted, subject to the approval of the President of the United States.

"Sec. 2. And be it further enacted, That the sections and parts of sections of land which by such grant shall remain to the United States within six miles on each side of each of said roads shall not be sold for less than double the minimum price of the public lands when sold; nor shall any of said lands become subject to private entry until the same have been first offered at public sale at the increased price.

"Sec. 3. And be it further enacted, That the said lands hereby granted to the said State shall be subject to the disposal of the legislature thereof for the purposes aforesaid and no other; and the said railroads shall be and remain public highways for the use of the Government of the United States, free from toll or other charge upon the transportation of any property or troops of the United States.

"Sec. 4. And be it further enacted, That the lands hereby granted to said State shall be disposed of by said State only in manner following, that is to say: That a quantity of land not exceeding one hundred and twenty sections for each of said roads, and included within a continuous length of twenty miles of each of said roads, may be sold; and when the governor of said State shall certify to the Secretary of the Interior that any twenty continuous miles of any of said roads is completed, then another quantity of land hereby granted, not to exceed one hundred and twenty sections for each of said roads having twenty continuous miles completed as aforesaid, and included within a continuous length of twenty miles of each of such roads, may be sold; and so from time to time until said roads are completed; and if any of said roads is not completed within ten years no further sales shall be made, and the lands unsold shall revert to the United States.

"Sec. 5. And be it further enacted, That the United States mail shall be transported over said roads, under the direction of the Post Office Department, at such price as Congress may by law direct: Provided, That until such price is fixed by law the Postmaster General shall have the power to determine the same."

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## III.

By the act of February 14, 1857 (Mich. Laws No. 126), the act of Congress of June 3, 1856, was accepted. Section 1 of the Michigan act is as follows:

"Sec. 1. The people of the State of Michigan enact: That the lands, franchise, rights, powers, and privileges granted to and conferred upon the State of Michigan, by an act of Congress entitled 'An act making a grant of alternate sections of land to the State of Michigan to aid in the construction of certain railroads in said State and for other purposes,' approved June third (3), eighteen hundred and fifty-six (1856), be and the same are hereby accepted

with the restrictions and upon the terms and conditions contained in said act of Congress."

Section 2 of the Michigan act, so far as it relates to this case, is as follows:

"So much of the aforesaid lands, franchises, rights, powers, and privileges as are or may be granted and conferred, in pursuance of said act of Congress, to aid in the construction of a railroad \* \* \* from Grand Haven to Flint, and thence to Port Huron, are hereby vested fully and completely in the Detroit and Milwaukee Railway Company, and in the Port Huron and Milwaukee Railway Company, in the manner following, to wit: So much of said lands as pertain or attach to said route from Grand Haven to Owosso in the County of Shiawassee, are hereby vested fully and completely in the Detroit and Milwaukee Railway Company, and so much of said lands as pertain or attach to said route from Owosso to Flint and thence to Port Huron, are hereby vested fully and completely in the Port Huron and Milwaukee Railway Company, to aid in the construction of the roads of said companies respectively; in like manner all the lands, franchises, rights, powers, and privileges which are, or may be granted and conferred, in pursuance of said act of Congress to aid in the construction of a railroad from Pere Marquette to Flint, and thence to Port Huron, are hereby vested fully and completely in the Flint and Pere Marquette Railway Company and in the Port Huron and Milwaukee Railway Company, according to the provisions of the act of Congress relating thereto and the direction of the board of control hereby appointed; \* \* \* All and each of the several railroad companies mentioned in this section shall be subject to all the conditional restrictions and obligations imposed upon them by this act as hereinafter provided."

Sections 3, 4, 5, and 6 of the Michigan act are as follows:

"Sec. 3. The lands, franchises, rights, powers, and privileges hereby conferred upon and vested in said railroad companies, or either of them, shall be exclusively applied in the construction of their respective lines of railroads, as above designated, and said lands shall be applied to no other purposes whatsoever; and each and every one of said railroads, when completed, shall, in all respects and in all its parts, be a first-class railroad; and the rail thereof shall be the 'T' or continuous rail.

"Sec. 4. Said railroads shall be and forever remain public highways for the use of the Government of the United States, free from toll or other charge upon the transportation of any property or troops of the United States; and the United States mail shall be transported over said railroads, under the direction of the Post Office Department, at such price as Congress may by law direct: Provided, That until such is fixed by law the Postmaster General shall have the power to determine the same.

"Sec. 5. Each and every one of said railroad companies is required by a vote of a majority of the directors thereof, to accept the lands, franchises, rights, powers, and privileges hereinbefore conferred; which acceptance shall be embodied in a written instrument, signed by the president, and attested by the secretary and cor-

porate seal of said company; and in such acceptance each of said companies, shall severally assent and agree to the provisions and requirements of this act, which acceptance shall be filed in the office of the secretary of state of Michigan, within sixty days after the passage of this act.

"Sec. 6. It shall be the duty of each of said railroad companies, on or before the first day of December next, to locate the line of its railroad and to make complete maps of said line, and to file copies of such maps in the offices of the governor and secretary of state of Michigan; and it shall be the duty of the governor after affixing his official signature to the duplicate map of each of said roads, to file them in the department having control of the public lands in the city of Washington; said lines so located shall not be considered absolutely final further than to fix the limits and boundaries within which said lands may be selected, but said company shall have the right to make alterations thereof when necessary to improve said line: Provided, Such alteration shall not materially change or alter such road."

So much of section 8 of that act as is applicable to this case reads as follows:

"For the purpose of securing the construction of the aforesaid railroads, within the time limited, and in the manner prescribed in this act, and for the purpose of properly managing and disposing of the lands appropriated to aid in the construction thereof, the governor of the State of Michigan, together with six commissioners, to be nominated by the governor and confirmed by the senate, are hereby constituted a board of control of the same, whose duty it shall be to manage and dispose of such lands in aid of the construction of the aforesaid railroads, in the manner in this act provided, and to do any and all other acts necessary and proper respecting the construction and building of said railroads, which shall be prescribed by law;" \* \* \*

Sections 11, 16, and 20 of the Michigan act read as follows:

"Sec. 11. Should either of said railroad companies fail to accept said lands on the terms of this act, within sixty days, or fail to make the survey and maps by the first day of December next, or fail to construct its entire line of road or any part thereof, in the time and manner required, in such case said board of control shall have the power, and it is hereby made their duty, to declare said lands, so far as they have not been sold in good faith, forfeited to the State, and said board of control are hereby required to confer said lands upon some other competent party, under the general regulations and restrictions of this act.

"Sec. 16. Said railroad companies shall take said grants of land with the conditions imposed, and incumbrances specified in this act, and shall in no court have any claim or recourse whatever upon the State of Michigan, for a misapplication of said grants, or for any of the incumbrances, or conditions in this act imposed.

"Sec. 20. In consideration of the grants of land and other privileges hereby conferred on each of the several railroad companies



mentioned and named in section two of this act the said several railroad companies are hereby required within sixty days from and after the first day of each and every year, to pay into the treasury of this State, as a specific annual tax, one per cent upon the cost of the road and its equipments and appurtenances, of whatever kind, and it shall be lawful for the legislature of this State, in their discretion, after ten years, to impose upon either or each of said railroad companies the payment of a further tax upon the gross or total earnings of such road of not exceeding two per cent; which said above several taxes shall be in lieu of all other taxes to be imposed within this State: Provided, That the provisions of this section shall not apply to railroad companies, in the upper peninsula of this State until after ten years from the passage of this act: Provided also, That the aforesaid additional tax of two per cent shall be imposed upon the Detroit and Milwaukee Railway Company and the Port Huron and Milwaukee Railway Company, only in proportion to the amount of land which they shall respectively receive in comparison with the quantity of lands received by the other railroad companies, which proportion shall be settled by the board of control."

Section 13 of the act of Congress approved July 12, 1878, 19 Stat. L., p. 82, reads as follows:

"Sec. 13. The railroad companies whose railroad was constructed in whole or in part by land grant made by Congress on the condition that the mails should be transported over their road at such price as Congress should, by law, direct, shall receive only eighty per centum of the compensation authorized by this act."

#### IV.

Within sixty days after the passage of the Michigan act of February 14, 1857, that being the period limited by section 5 of that act, the Detroit & Milwaukee Railway Company and the Port Huron & Milwaukee Railway Company each filed in the office of the secretary of state of Michigan an attempted acceptance of the act, which was embodied in a written instrument signed by the president, and attested by the secretary and corporate seal of each company in which each company severally assented and agreed to the provisions and requirements of the act with the exception that each company protested against section 20 of the act and refused its assent to the provisions of that section. Thereupon, August 26, 1857, the board of control of railroads that had been created pursuant to the Michigan act of 1857 declared that the public lands were forfeited as to those companies and reverted in the State of Michigan for the purposes in the act of Congress expressed. The board of control made that declaration of forfeiture pursuant to the provisions of section 11 of the Michigan act of February 14, 1857.

The board of control was continued in office until June 3, 1866, by the terms of the Michigan act of March 19, 1863, No. 153, and the board was continued and perpetuated indefinitely by the Michigan act of March 21, 1865, No. 318.



## V.

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The Detroit & Milwaukee Railway Company's projected line of railroad extended from Owosso, in Shiawassee County, west to Grand Haven, State of Michigan.

The Port Huron & Lake Michigan Railroad Company was chartered in 1847 by special act of the Michigan Legislature to construct a railroad from Port Huron to some point on Lake Michigan at or near the mouth of the Grand River. Said act was amended February 13, 1855, and said company filed its acceptance of the amendatory act as required by its terms in the office of the secretary of state on April 11, 1855. The company was authorized by its original charter to receive the grant of land in question.

The Port Huron & Milwaukee Railway Company was organized under the act approved February 12, 1855, to construct a line of railroad from Grand Haven to Flint and then to Port Huron over practically the same route proposed by the Port Huron & Lake Michigan Railroad Company. The Port Huron & Milwaukee Railway Company surveyed said line of road and purchased and secured title by deed to the greater part of the land on which said proposed road was to be built. The land so purchased was about 6 rods in width. December 9, 1857, said company filed in the General Land Office of the Interior Department a map of definite location of said road, which was approved by that office. A small amount of work was done by said Port Huron & Milwaukee Railway Company on its line of railroad between Port Huron and Flint. On January 7, 1856, said Port Huron & Milwaukee Railway Company mortgaged to Charles J. Brydges et al., trustees, to secure the payment of certain bonds and interest thereon, all and singular the railway of said company extending from the St. Clair River in the town of Port Huron and county of St. Clair in the State of Michigan through the counties of St. Clair, Lapeer, Genesee, and Shiawassee, to its junction with the Detroit & Milwaukee Railway in Shiawassee County, and all rights of way and real estate theretofore, and thereafter to be, acquired in the construction and occupation of said railroad of said company, and all and singular the property of said company, present or future, not enumerated, and the finances, rights, and privileges of said company. Thereafter by foreclosure of said mortgage and by mesne conveyances all of said property of said Port Huron & Milwaukee Railway Company was duly conveyed to trustees for said Port Huron & Lake Michigan Railroad Company on May 12, 1865, and duly conveyed by said trustees to said Port Huron & Lake Michigan Railroad Company on July 25, 1873.

On June 3, 1863, the Secretary of the Interior certified to the governor of Michigan 30,908.76 acres of land, lying west of Flint, for said Detroit & Milwaukee Railway Company. On November 1, 1864, 6,428.68 acres were certified by the Secretary of the Interior to the governor of Michigan for said Port Huron & Milwaukee Railway Company. The lands last mentioned lay to the north and to the south of the railroad afterwards constructed between Port Huron

and Flint, and, with the exception of 97<sup>100</sup>/<sub>100</sub> acres in Shiawassee County, said lands were east of Flint.

The major portion of the work of construction of said line of railroad between Port Huron and Flint was done by said Port Huron & Lake Michigan Railroad Company, which commenced laying rails at Port Huron and thence westerly in the summer of 1869, and its said railroad was completed and in operation from Port Huron to Imlay City, and then Lapeer by the fall of 1870, and from Port Huron to Flint, on December 12, 1871. Considerable sums of money had been subscribed and paid by individuals and organizations along the line of said route to aid in its construction from Port Huron to Flint. The line above described is the only line of railroad ever built directly connecting Port Huron and Flint. On August 28, 1875, said Port Huron & Lake Michigan Railroad Company filed in the office of the secretary of state of Michigan a map of the route of said railroad from Port Huron to Flint, as established by the resolution of the board of directors of said railroad company on December 4, 1872, and a certified copy thereof was accordingly filed in the General Land Office of the Interior Department.

On May 1, 1869, said Port Huron & Lake Michigan Railroad Company mortgaged its said line of railroad from Port Huron through Lapeer and Flint to Lansing, in the State of Michigan, together with all franchises, machinery, tools, rolling stock, and equipment for the construction, operation, and repair of said railroad then held or thereafter acquired, and all other property, real and personal, then owned or that might thereafter be acquired by it to the Union Trust Company of New York, as trustee, to secure payment of certain of its bonds with interest thereon.

On July 30, 1873, said Port Huron & Lake Michigan Railroad Company was duly consolidated with the Peninsular Railway Company, whose line of railroad extended from Lansing, Michigan, to Valparaiso, Indiana, under the corporate name of the Chicago & Lake Huron Railroad Company, a corporation organized on or about said date under the laws of the States of Michigan, Indiana, and Illinois for the purpose of constructing, maintaining, and operating a railroad from Port Huron, Michigan, to Chicago, Illinois. At the time mentioned the line of railroad between Flint and Lansing, Michigan, was uncompleted. In 1874 the Chicago & Northeastern Railroad Company was organized for the purpose of completing the gap between Flint and Lansing and utilizing the work already done. Work was done from time to time, and the line of railroad between Flint and Lansing was completed on or about January 1, 1877.

In September, 1875, a bill in equity was filed in the Circuit Court of the United States for the Eastern District of Michigan by said Union Trust Company of New York, as trustee, to foreclose the mortgage executed by said Port Huron & Lake Michigan Railroad Company, heretofore mentioned. Thereafter by supplemental proceeding William R. Bowes, trustee for the Port Huron & Lake Michigan Railroad Company, was made a party defendant to said foreclosure proceedings. In March, 1878, said Circuit Court of the

United States duly entered a decree of foreclosure in said proceeding wherein it adjudged and decreed that in default of payment of the amount therein ordered to be paid to the complainant, said Union Trust Company of New York, as trustee, for the use and benefit of the holders of the bonds secured by said mortgage, all the right, title, and interest of said Chicago & Lake Huron Railroad Company and of said Port Huron & Lake Michigan Railroad Company in and to the property described in said mortgage should be sold at public auction. Said property was bought in at the sale conducted under said foreclosure proceeding in June, 1879, by purchasers who conveyed it to the Northwestern Grand Trunk Railway Company, which thus became the owner of the railroad from Port Huron to Flint. Subsequent consolidations were made until October 31, 1900, the Grand Trunk Western Railway Company, plaintiff herein, became the owner of said line of railroad between Port Huron and Flint, and other lines as well.

## VI.

On November 18, 1871, said Port Huron & Lake Michigan Railroad Company, through its officers and agents, appeared before the Board of Control for Railroads of the State of Michigan and asked that the lands mentioned in the next preceding finding as having been previously certified by the Secretary of the Interior to the governor of Michigan for the Detroit & Milwaukee Railway Company and the Port Huron & Milwaukee Railway Company, be conferred upon it for the purpose of aiding it in the construction of said railroad, which was described as extending from Grand Haven to Flint, and thence to Port Huron. Thereupon, after due consideration, said board passed a resolution declaring that if said lands or any portion of them could be lawfully appropriated to said Port Huron & Lake Michigan Railroad Company for the purpose of aiding in the construction of the road in the act of Congress and in the Michigan act mentioned, subject to the restrictions of the act of Congress, the same should and of right ought to be done; but expressed some doubt as to its legal right to transfer the title in said lands to said company.

On May 1, 1873, said Port Huron & Lake Michigan Railroad Company presented the following petition to said Board of Control for Railroads in the State of Michigan:

"To the honorable the Board of Control of Railroad Lands of the State of Michigan:

"The petition of the Port Huron & Lake Michigan Railroad Co. respectfully represents that since the action of the board of control of November 18, 1871, in the passage of a resolution declaring among other things in substance that the said Port Huron & Lake Michigan Railroad Company was justly entitled to and ought to receive 'to aid in the construction of their road' the lands granted by act of Congress of June 3, 1856, to the State of Michigan to aid in the construction of a line of railroad from Grand Haven to Flint, &

thence to Port Huron, if the State had still the power to confer upon it such lands, it appears by the decision of the Commissioner of the Genl. Land Office, as will appear by documents herewith filed, that the title to said granted lands still remains in the State of Michigan, with the right to dispose of them for the purposes specified in said grant, and the said company having completed sixty-six miles of the unfinished portion of said line & being the only company applying for, are entitled to said lands within the purposes of the grant.

"Your memorialists further respectfully ask for such action of the board as will confer upon & ensure to this company all the rights, privileges, & interest & title in & to the said lands which are vested in or may enure to the State of Michigan.

33 "And your memorialists further request that such grant to said company may be made, if in the opinion of your board it should seem proper, with such conditions in behalf of certain actual settlers & homestead occupants of & upon certain portions of said lands as are in accordance with petitions of such occupants as are herewith filed & as in the judgment of the board all conditions just & proper to be made.

Very respectfully,

"THE PT. HURON & LK.  
MICHIGAN R. ROAD CO.

By W. L. BANCROFT,  
*Its President.*

On said first day of May, 1873, said board of control for railroads ordered and directed the transfer and grant of said lands to said railroad company; a copy of the resolution by which said board directed said grant of land is incorporated in the deed hereinafter set out. All other persons who at any time claimed any interest in said lands released their claims to said board of control for railroads and the same was accepted and duly recorded on May 2, 1873.

On May 30, 1873, the governor of Michigan executed and delivered an instrument in writing which was and is in words and figures as follows, to wit:

"In the name of the people of the State of Michigan, to all to whom these presents shall come, greeting:

"Whereas by an act of Congress approved June 3, 1856, making a grant of alternate sections of lands to the State of Michigan to aid in the construction of certain railroads therein, there were granted certain lands to aid in the construction, among other railroads, of a railroad from Grand Haven to Flint and thence to Port Huron in the State of Michigan;

"And whereas, in pursuance of said act of Congress, there were appropriated by an act of the Legislature of the State of Michigan approved Feb'y 14, 1857, certain of said lands so appropriated by said act of Congress to aid in the construction of a railroad from Grand Haven to Flint and thence to Port Huron;

"And whereas the management and disposition of said lands in

aid of the construction of said railroads was by said act of the State of Michigan committed to the board of control as created by the same act;

"And whereas, in pursuance of said act of Congress, there was appropriated by said act of the Legislature of Michigan, approved February 14, 1857, to the Detroit & Milwaukee Railway Company so much of said lands as pertained or attached to said route from Grand Haven to Owosso; and to the Port Huron and Milwaukee Railway Company so much of said lands as pertained or attached to said route from Owosso to Flint and thence to Port Huron;

"And whereas said lands were not accepted by said railway companies or by either of them as was required by said act of the Legislature of Michigan, and in consequence and by reason of such non-acceptance by said companies said lands were declared forfeited to said companies and revested in the State of Michigan for the purposes in said act of Congress expressed;

"And whereas said lands as were originally appropriated to build the road or to aid in building the road from Grand Haven to Owosso were, on the 26th of August, 1857, by resolution and deed of the board of control of railroad lands for the State of Michigan, transferred for the purposes aforesaid, subject to the regulations and restrictions of said act of the Legislature of Michigan to Charles John Brydges, Zachariah Chandler, John Owen, and Alexander H. Sibley, trustees, for the purposes aforesaid;

"And whereas all such lands as were so originally appropriated to aid in the building of said road from Owosso to Flint and thence to Port Huron were on the 6th of November, 1857, by resolution and deed of the board of control of railroad lands for the State of Michigan, duly transferred for the purpose of aiding in building such portion of said railroad, subject to the regulations and restrictions of the act of the Legislature of the State of Michigan providing for the disposal of said lands unto Charles John Brydges, Edmund A. Brush, and Willard M. McConnell, trustees;

"And whereas said trustees for both said portions of said lands never conveyed or assumed to convey the same or any portion thereof, but have disclaimed any and all interest therein and released their form of title thereto in due form unto the State of Michigan, so that said State may execute a perfect title of record to all of said lands in pursuance of and for the purpose expressed in said act of Congress and of said act of the Legislature of the State of Michigan;

"And whereas the said railroad board of control for the State of Michigan has by its resolution dated November 18, 1871, resolved that if said lands or any portion of them can be lawfully appropriated to said Port Huron & Lake Michigan Railroad Company for the purpose of aiding in the construction of said road in said act of Congress and in said act of the Legislature of Michigan mentioned, subject to the restrictions of said act of Congress, that the same should and of right ought to be done;

"And whereas said board of control of railroad lands did, on the first day of May, eighteen hundred and seventy-three, adopt certain resolutions appropriating certain of said lands above referred to

unto the said Port Huron & Lake Michigan Railroad Company, their successors and assigns, which said resolutions are in the words and figures following, viz:

“Whereas the Port Huron & Lake Michigan Railroad Company have this day presented to this board their written memorial asking that the board will confer upon them and their successors all and whatsoever interest the State of Michigan now has in certain lands granted by act of Congress, of June 3, 1856, to the State of Michigan, to aid in the construction of a railroad from Grand Haven to Flint and thence to Port Huron in the State of Michigan;

“And whereas this board has by its resolution dated November 18, 1871, resolved that if such lands or any portion of them can be lawfully appropriated to said company for the purpose of aiding in the construction of said road subject to the restrictions of said act of Congress that the same should and of right ought to be done;

“And whereas from a review of the action of the legislature and of this board relative to such lands it appears that the said lands are still subject to disposition by this board for the purposes contemplated by said act of Congress;

“And whereas the said Port Huron and Lake Michigan Railroad Company are engaged in constructing and completing a railroad which with its connections will form a continuous line from Grand Haven to Flint and thence to Port Huron, in said State of Michigan, as required by said act of Congress, and is the only company applying for said lands: Now, therefore,

35 “Resolved, That the board of control of railroad lands for the State of Michigan, by virtue of the powers in them vested, do hereby designate the said Port Huron & Lake Michigan Railroad Company as the proper company to receive said grant, and they do therefore hereby release to and confer upon said Port Huron & Lake Michigan Railroad Company, their successors and assigns, all and every the right, title, and interest which now remains in said State of Michigan in and to said lands, be the same more or less, for the purpose of constructing and completing their said road;

“And whereas it appears that various parties have settled in and upon certain portions of said lands and are now in the actual occupation of the same;

“And whereas it further appears to this board, from documents presented to them, that the great majority of said settlers have petitioned Congress that said lands be granted to said Port Huron & Lake Michigan Railroad Company upon condition that said settlers should have the right of purchasing said lands so occupied and settled upon, at the rate of one dollar and twenty-five cents per acre, extended to them in order to enable them to perfect their title: Therefore,

“Resolved, That the release granted to said company by said foregoing resolution is made with the understanding and condition that the said railroad company shall so release and convey such occupied lands to said settlers on the payment by them to said company of the sum of one dollar and twenty-five cents per acre according to the request of said settlers;”



"And whereas said Port Huron & Lake Michigan Railroad Company have applied to me, the governor of the State of Michigan and ex officio president of said board of control of railroad lands for the State of Michigan, for due and proper evidence of title to said lands so granted to said company by said board of control, and have filed with me their bond in the penal sum of ten thousand dollars, by which they obligate themselves to make title to said settlers of their said lands whenever they shall apply for the same under and in pursuance of said board of control's resolution above recited:

"Now, therefore, I, John J. Bagley, governor of said State, in consideration of the premises and by virtue of the power and authority vested in me by the laws of said State, in such case made and provided, and of the resolutions of the said board of control, and for the purpose of giving effect to the same in the manner and form as they were adopted by said board, do issue this patent in the name and by the authority of the people of the State of Michigan, hereby releasing to and conferring upon said Port Huron & Lake Michigan Railroad Company, their successors and assigns, all and every the right, title, and interest which now remains in or which may at any time hereafter for the purposes contemplated by said act of Congress accrue to the said State of Michigan in and to said lands referred to and described in said resolutions of said board of control of railroad lands for the purpose of constructing, or aiding in constructing, and completing their said road, but subject to the condition in favor of actual settlers and occupants upon certain of

36 said lands, as in said resolutions set forth and expressed, and a more particular description of which said lands will be found in four certain certificates from the Commissioner of the General Land Office at Washington hereunto attached, two of which are dated May 25, 1863, and numbered forty (40) and forty-one (41), and two others are dated October 27, 1864, and numbered sixty-one (61) and sixty-two (62), and which four certificates embrace in all thirty-six thousand seven hundred and thirty-one and 73/100 acres of land (36,731 73/100 acres). To have and to hold the said above described and granted premises pursuant and subject to said resolutions of said board of control of railroad lands and the conditions and provisions therein contained unto the said Port Huron & Lake Michigan Railroad Company, their successors and assigns forever.

"In testimony whereof I have hereunto caused to be affixed the great seal of the State of Michigan and subscribed my name at Lansing on this the thirtieth day of May in the year of our Lord one thousand eight hundred and seventy-three.

[SEAL.]

"JOHN J. BAGLEY,

*Governor.*

"By the Governor:

"G. M. HASTY,

*"Dep. Sec. of State."*

In the certificates or lists mentioned in said instrument the lands are specifically described by section, township, range, and acreage

in tract; which instrument and certificates or lists were duly recorded in the General Land Office of the Department of the Interior, in the office of secretary of state of the State of Michigan, and in the proper offices in the various counties through which said line of railroad passed. Said lists or certificates described 36,731 73/100 acres of land, 6,428 68/100 acres being the same lands described in the certificate of the Secretary of the Interior, dated November 1, 1864, and mentioned in Finding V. Of said 6,428 68/100 acres, 855 09/100 acres were within the six-mile limits and in St. Clair and Lapeer Counties, State of Michigan, and 5,537 59/100 acres were outside of said six-mile limits and within the fifteen-mile limits and located in the counties of Shiawassee, Oakland, Sanilac, St. Clair, and Lapeer, State of Michigan.

On May 25, 1875, the following instrument in writing bearing date May 30, 1873, was filed in the office of the secretary of state of the State of Michigan, viz:

"Whereas the board of control of railroad lands of the State of Michigan at a meeting held at the city of Detroit on the first and second days of May in the year A. D. eighteen hundred and seventy-three did grant to and confer upon the Port Huron and Lake Michigan Railroad Company of the State of Michigan certain lands of the said State of Michigan granted to the said State by act of Congress of June 3d, A. D. eighteen hundred and fifty-six, to aid in the construction of a railroad from Grand Haven to Flint and thence to Port Huron, in the said State of Michigan, certain lands appertaining to said route;

"And whereas the said Port Huron and Lake Michigan Railroad Company at a regular meeting of the board of directors of said railroad company held for that purpose at the city of Port Huron, in said State, on the 30th day of May, A. D. eighteen hundred and seventy-three, did resolve and conclude and determine to receive and accept such of the aforesaid lands as the said board of control might confer upon said railroad company, subject to all the restrictions and conditions then imposed by the said board of control:

"Therefore this is to certify that the said Port Huron and Lake Michigan Railroad Company by the unanimous vote of all the directors of said railroad company at a regular meeting of said directors for that purpose held at the city of Port Huron aforesaid on this 30th day of May, A. D. 1873, does hereby accept the said lands, franchises, rights, powers, and privileges therein and thereby conferred, together with all the several conditions and restrictions mentioned, and the said railroad company does hereby assent and agree to the provisions and requirements of the acts of the Legislature of the said State of Michigan and the said act of Congress before referred to.

"In witness whereof this instrument is signed by me, Edgar White, president of the said Port Huron and Lake Michigan Railroad Company, the day and year above written.

"And I, Edward B. Taylor, secretary of the said railroad company, have the day and year above written, attested this instrument by



causing the seal of said railroad company to be hereto attached this 30th day of May, A. D. 1873.

[SEAL.]

"EDWARD B. TAYLOR,

*"Secretary, P. H. & L. M. R. R.*

"EDGAR WHITE,

*"President, P. H. & L. M. R. R. Co."*

At a meeting of the board of directors of said Port Huron & Lake Michigan Railroad Company held May 13, 1873, William L. Bancroft and Edgar White were duly appointed to take such measures as to them seemed best for the sale and disposition of the lands granted by Congress to the State of Michigan in aid of the construction of the line of railroad from Grand Haven to Flint, and thence to Port Huron, and by said State conveyed to said company, and they were authorized to appoint an agent or agents to execute under the corporate seal of said company deeds of conveyance to said lands. Subsequently said Bancroft and White selected one William R. Bowes, being the same William R. Bowes mentioned in Finding V, as agent or trustee in trust to sell and convey the lands referred to for said company, and a deed of conveyance of said lands in trust was thereupon made to him. On July 30, 1873, by a meeting of the board of directors of said Port Huron & Lake Michigan Railroad Company the action of said Bancroft and White in the selection of said Bowes and the execution of the deed of trust to him was duly approved.

Under date of April 13, 1874, the Governor of Michigan certified to the Secretary of the Interior the completion of 60 miles of railroad between Port Huron and Flint by said Port Huron and Lake Michigan Railroad Company.

In 1877 the Legislature of the State of Michigan passed the following act, which was approved May 14, 1877 (Laws Mich., 1877, p. 121):

"Section 1. The people of the State of Michigan enact, That the action of the board of control of railroads on the first day of May, 1873, in conferring upon the Port Huron and Lake Michigan railroad company certain lands, granted by the Congress of the United States to the State of Michigan June 3, 1856, to aid in the construction of a railroad from Grand Haven and Pere Marquette to Flint, and thence to Port Huron, is hereby ratified and confirmed, with like force and effect as if said board had, at the time of its said action, due and full authority in that behalf: Provided, however, That nothing in this act shall impair or effect any valid right or interest heretofore acquired by any individual or corporation in said lands or any part thereof.

"Sec. 2. The action of the governor of this State in conveying said lands to the Port Huron and Lake Michigan railroad company, on the (30th) thirtieth day of May, eighteen hundred and seventy-three, in pursuance of the act of said board of control of railroads, is hereby ratified and confirmed, and said conveyance shall be deemed to be of full force and effect from the date thereof."

March 3, 1879, Congress released to the State of Michigan the reversionary interest of the United States in the lands under consideration with a proviso that, "This release shall not in any manner affect any legal or equitable rights in said lands which have been acquired, but all such rights shall be and remain unimpaired." (20 Stats. L., 490.)

The following act, approved June 9, 1881, was passed by the Legislature of the State of Michigan (Laws Mich. 1881, p. 362):

"Section 1. The people of the State of Michigan enact, That the action of the board of control of railroads on the first day of May, eighteen hundred and seventy-three, in conferring upon the Port Huron and Lake Michigan Railroad Company certain lands granted by the Congress of the United States to the State of Michigan June third, eighteen hundred and fifty-six, to aid in the construction of a railroad from Grand Haven and Pere Marquette to Flint and thence to Port Huron, as to all of such lands as are situated north and south of the railroad constructed from Port Huron to Flint, is hereby ratified and confirmed with like force and effect as if said board had at the time of its action due and full authority in that behalf; and as to such of said lands above mentioned as have been conveyed by said company, the title, so far as the State of Michigan is empowered to act in the premises, is hereby vested in such purchasers from said company: Provided, however, That nothing in this act shall impair or affect any valid right or interest heretofore acquired by any individual, corporation, or other party in said lands or any part thereof.

"Sec. 2. The Port Huron and Lake Michigan Railroad Company having heretofore constructed its road from Port Huron to Flint upon the line contemplated by the act of Congress granting said lands to the State of Michigan, and said State having since acquired by an act of Congress approved March third, eighteen hundred and seventy-nine, all the reversionary claim and interest of the United States in said lands, the action of the governor of this State in conveying said lands so situated as aforesaid to the Port Huron and Lake Michigan Railroad Company on the thirtieth day of May, eighteen hundred and seventy-three, in pursuance of the act of said board of control of railroads, is hereby ratified and confirmed, and such conveyance as to said land shall be deemed to be of full force and effect

from the date thereof, and all deeds and conveyances heretofore executed by the Port Huron and Lake Michigan Railroad

Company, or by the officers or trustees of said company, of the lands hereinbefore mentioned, situate north or south of the road from Port Huron to Flint, shall be deemed to be of full force and effect from the date thereof, and all of the title to the above-described lands acquired by the State of Michigan by the act of Congress of June third, eighteen hundred and fifty-six, and the subsequent act of March third, eighteen hundred and seventy-nine, to so much of said lands as has been conveyed by said Port Huron and Lake Michigan Railroad Company, is hereby vested in the grantees of said company and to the rest and residue of said lands is vested in said company, its successor or assigns, all of said lands however to be subject to the payment of all taxes heretofore assessed thereon.

"This act is ordered to take immediate effect."

## VII.

In March, 1899, the Second Assistant Postmaster General sent to the Chicago & Grand Trunk Railway Company a distance circular and agreement for the transportation of the mails over postal route No. 137039 from Port Huron, Michigan, to Chicago, Illinois, for the four-year period beginning July 1, 1899, which was duly executed by said railway company and returned to the Postmaster General. Said circular contained the following agreement:

"In case the Post Office Department authorizes the transportation of mails over this line or any part of it, the railroad company agrees to accept and perform the service upon the conditions prescribed by law and the regulations of the department."

Thereafter, on October 17, 1899, after the weighing of the mails had been completed and compensation for the transportation thereof fixed for the term, the Second Assistant Postmaster General addressed a communication to said Chicago & Grand Trunk Railway Company informing him that—

"Compensation for the transportation of mails, etc., on route No. 137039, between Port Huron, Mich., and Chicago, Ill., has been fixed from July 1, 1899, to June 30, 1903, under acts of March 3, 1873, July 12, 1876, and June 17, 1877, at the rate of \$105,210.64 per annum. \* \* \* This adjustment is subject to future orders and to fines and deductions, and is based on a service of not less than six round trips per week."

Subsequently and on January 24, 1901, the Postmaster General issued the following order:

"Order No. 2405. Chicago & Grand Trunk Ry. Co., \$105,210.64; 137039—Port Huron, Michigan—Chicago, Ill. \* \* \* Recognize the Grand Trunk Western Ry. Co. as being entitled to compensation due or to become due for services performed on route 137039 in accordance with the relinquishment submitted."

In February, 1903, February, 1907, and February, 1911, said Second Assistant Postmaster General sent to the plaintiff company like distance circulars and agreements for the transportation of the mails over said postal route 137039 from Port Huron, Michigan, to Chicago, Illinois, for the four-year periods beginning, respectively, July

1, 1903, July 1, 1907, and July 1, 1911, each of which was duly executed by said company and returned to the Postmaster General; in August, 1903, October, 1907, and October, 1911, the Postmaster General, after the weighing of the mails had been completed in each of those years and the compensation for the transportation thereof had been fixed for each of those terms, addressed a communication to the plaintiff company informing it of that fact. The amount found to be due the plaintiff company for the term beginning July 1, 1911, was stated by the Postmaster General to be \$99,858.95 per annum, exclusive of the use of railway post office cars.

Thereafter, on December 28, 1912, the Postmaster General modified and approved an order of the Second Assistant Postmaster General issued November 27, 1912, which restated and reduced the

amount to which the plaintiff company by said orders of January, 1901, August, 1903, October, 1907, and October, 1911, had been stated to be entitled for the transportation of said mails, so as to cause the same to provide pay between Port Huron R. R. station and Flint, Michigan, on a land-grant basis. The Postmaster General thereupon reduced the pay of the plaintiff company for the period November 1, 1912, to June 30, 1915, from the said annual basis of \$99,858.95 to \$96,075.24, and deducted \$50,359.70 for overpayment from October 1, 1900, to October 31, 1912, from the pay of the plaintiff company for the year ending June 30, 1913.

### VIII.

From the time of the establishment of a postal route from Port Huron to Lapeer, in 1871, and the establishment of that route as from Port Huron to Flint, in January, 1872, the mails have been carried over the route between Port Huron and Flint by the respective companies owning it. From the time of the establishment of said postal route from Port Huron to Lapeer, in 1871, and the establishment of that route as from Port Huron to Flint, in January, 1872, on down to November 27, 1912, the road from Port Huron to Flint and each and every part thereof was continuously and uniformly treated by the department in its orders stating the route and its termini, and fixing the pay for carrying the mails, and its distance circulars and contracts for the carrying of mails, and in its full payments without deduction to the various companies for carrying the mails, as a nonland aided or nonland grant road.

In the report of the Postmaster General for 1883 the officials of the department began the practice which they continued until 1912 of stating the names of the roads that had been aided wholly or partially in their construction by land grants. In none of those reports was the road or the route between Port Huron and Flint stated as land aided or as a land grant road, either wholly or partially.

From the time the operation of the road between Port Huron and Flint was begun, December 12, 1871, until some time in the year 1912 the War Department uniformly and continuously treated and dealt with the various companies owning that road on the theory that it was not a land aided or a land grant road, and for the transportation of any and all property or troops of the United States full compensation was paid by the United States, through the War Department, to the various companies owning that road, as to a nonland aided or nonland grant road for such transportation of any property or troops of the United States.

Early in the year 1912 the War Department requested the Comptroller of the Treasury for an advance or advisory decision as to whether or not the road between Port Huron and Flint was a land aided or land grant road, and March 29, 1912, the comptroller rendered a decision in which he held that it was a land grant road, and

on further consideration, August 30, 1912, the comptroller rendered a decision in which he affirmed the former one. Pursuant to that ruling, and on that account, November 27, 1912, the Postmaster General issued orders concerning said postal route, which are set forth and described in Finding VII. Petitioner filed its claim with the Auditor for the Post Office Department for the amount of, to wit, \$52,566.87, as due to it for the transportation of the mails from November 1, 1912, to June 30, 1913, but the auditor for that department disallowed the claim. Petitioner then appealed the case to the Comptroller of the Treasury who, August 20, 1913, affirmed the action of the auditor in the premises.

### *Conclusion of Law.*

Upon the foregoing findings of fact the court decides, as a conclusion of law, that the petition herein should be and the same is hereby dismissed. Judgment is rendered in favor of the United States against the plaintiff for the cost of printing the record in this cause in the sum of five hundred and eighty-eight dollars (\$588), to be collected by the clerk as provided by law.

### *Opinion.*

CAMPBELL, *Chief Justice*, delivered the opinion of the court:

The controlling question for decision is whether plaintiff's road from Port Huron to Flint was land-aided within the meaning of the act of 1856. Congress granted to the State of Michigan, and the latter duly accepted, the grant of certain lands "to aid in the construction of" certain railroads, one of which was described generally as "from Grand Haven and Pere Marquette to Flint and thence to Port Huron." Two railroad companies were designated to receive the lands pertaining to the route "from Grand Haven to Flint and thence to Port Huron"—namely, the Detroit & Milwaukee Railway Company and the Port Huron & Milwaukee Railway Company, the first named to have the lands attaching to the route from Grand Haven to Owosso, and the Port Huron & Milwaukee Company to have the lands pertaining to the route from Owosso to Flint and thence to Port Huron. This last-named company filed a qualified acceptance of the act of the Michigan Legislature owing to a provision therein relative to taxation and a payment of tax on its gross earnings. The Board of Control of Railroads provided for in the act of the legislature subsequently annulled any grant to said company because of its said nonacceptance of the terms of the act.

Later, however, the railroad company filed its map or designation of definite location in the office of the Secretary of the Interior, and in 1864 there was certified by the Land Office a list of lands pertaining to the route from Port Huron to Flint. The Port Huron & Milwaukee Company acquired rights of way and

did some work on its contemplated line, but its properties were later sold under foreclosure proceedings. These finally came into the ownership of the Port Huron & Lake Michigan Railroad Company, which built the road from Port Huron to Flint, completing it and having it in operation on December 12, 1871. This company issued its bonds, secured by mortgage on the properties it owned at the date of the mortgage and those it should thereafter acquire. Considerable sums of money were subscribed by individuals and by public bodies towards the construction of said line of road.

A few weeks before the actual completion of the road from Port Huron to Flint—to wit, in November, 1871—the officials and agents of the Port Huron & Lake Michigan Railroad Company applied to said Board of Control for the lands granted by the act of Congress and certified by the Secretary of the Interior as pertaining to the original route from Port Huron to Flint, and also for the lands which had also been certified by the Secretary as pertaining to the contemplated route from Grand Haven to Owosso, there having been certified 6428.68 acres for the Port Huron & Milwaukee Company, lying, with a small exception, between Port Huron to Flint, and 30,998.76 acres west of Flint for the Detroit & Milwaukee Company, or an aggregate of about 36,000 acres for the entire route, which, as has been stated, was divided between two companies, making Owosso the meeting point. The Board of Control entertained some doubt of its right to grant the lands to said road, but expressed the view that, if it could be lawfully done, the lands should be conveyed to said road as the party entitled to them. This action was taken by the board in November, 1871, shortly before the road was in operation to Flint, and the matter apparently remained in abeyance until May 1, 1873, at which time there was presented to said Board of Control a petition by the Port Huron & Lake Michigan Railroad Company, which recited said action of the board in November, 1871, "in the passage of a resolution declaring among other things in substance that the said Port Huron & Lake Michigan Railroad Company was justly entitled to and ought to receive, to aid in the construction of their road, the lands granted by the act of Congress of June 3, 1856, to the State of Michigan to aid in the construction of a line of railroad from Grand Haven to Flint and thence to Port Huron, if the State had still the power to confer upon it such lands;" and further recited that from documents filed with the petition "it appears by the decision of the Commissioner of the General Land Office" that the State of Michigan had the right to dispose of said lands for the purposes specified in the grant. The petition further stated that "the said company having completed 66 miles of the unfinished portion of said line," and being the only company applying for, "are entitled to said lands within the purposes of the grant." The prayer of the petition was that the lands be conferred on the petitioner with a proper recognition of the rights of any actual settlers on the same.

Before the date of this petition a line of road had been built from the westward through Owosso and thence to Detroit, but not from Owosso toward Flint. There was thus a gap between Owosso and Flint of some miles, they being in adjoining counties. The petition,



43 in referring to the line from Grand Haven to Flint and thence to Port Huron, as originally contemplated in the act, speaks of the "unfinished portion" of that line, which evidently was from Owosso to Flint and thence to Port Huron, and of this "unfinished portion" the petitioner had built about 60 miles—namely, from Port Huron to Flint. The board of control passed resolutions reciting the history of the transactions involving the lands, designated the Port Huron & Lake Michigan Railroad Co. "as the proper company to receive said grant," and directed the transfer of the lands to that company "for the purpose of constructing and completing their said road." The railroad company then applied to the governor of the State, who was ex officio president of the board of control, "for due and proper evidence of title to said lands so granted to said company by said board of control," and the governor, on May 30, 1873, issued a patent to said company, their successors and assigns, for said lands "for the purpose of constructing, or aiding in constructing, and completing their said road," subject, however, to a condition in favor of actual settlers and occupants upon certain of the lands. On the same day upon which the patent was issued the railroad company, through its president and secretary, acting under resolutions by its directors, duly accepted the grant and assented and agreed to "the provisions and requirements of the acts of the Legislature of the State of Michigan and the said act of Congress before referred to." In July, 1873, the railroad company confirmed the action of a committee which its directors had created "to take such measures as to them seemed best for the sale and disposition of the lands granted by Congress to the State of Michigan in aid of the construction of the line of railroad from Grand Haven to Flint, and thence to Port Huron, and by said State conveyed to said company," the action of the committee having been the selection of one Bowes as agent or trustee to sell and convey the lands for the company and the conveyance to him of the lands in trust for said purposes.

It thus definitely appears that the Port Huron & Lake Michigan Railroad Company applied for the lands, asserted its right to them, accepted the grant and proceeded to exercise ownership and control of them. The lands so granted, it will be observed, included some 30,000 acres, most if not all of which were west of Owosso, and some 6,000 acres, all of which, except about 97 acres, were east of Flint. The latter lay on either side of the line from Port Huron to Flint and were scattered within the limits of the land grant in the several counties between said points. Some litigation having arisen between the trustee appointed by the railroad to handle and dispose of the lands for it and another claiming a part of the lands, the case went to the Supreme Court of Michigan. The land in question was west of Owosso, and the fundamental question in the case before the Supreme Court of Michigan was, as stated by that court (Bowes v. Haywood, 35 Mich., 241, 244), "the right of the Port Huron & Lake Michigan Railroad Company to receive the forfeited grant which had been made to the Detroit & Milwaukee Railroad Company." The court below having found that there was no evidence, claim, or pretense that the Port Huron & Lake Michigan

Railroad Company contemplated building any road on the route from Grand Haven to Owosso, the Supreme Court said the question was "whether the legislation of Congress and of the State would au-

44 authorize the board of control to grant lands lying on the route from Grand Haven to Owosso for the construction of a road east of Owosso." In an opinion by Judge Cooley it was held that the attempted grant of the lands west of Owosso to said company was void, and that the lands could not be granted to a road which was not contemplating a line from Grand Haven to Owosso. That case does not deal with the grant of the lands east of Flint.

In May, 1877, the Legislature of Michigan passed an act purporting to ratify and confirm the action of the board of control and the governor of May 1 and May 30, respectively, in granting said lands to the Port Huron & Lake Michigan Railroad Company, and thereafter another case arose wherein the Supreme Court of Michigan (*Fenn v. Kinsey*, 45 Mich., 446) adhered to their ruling in *Bowes v. Haywood*, *supra*, and held that said act of the legislature was not effective to give validity to said grant of lands west of Owosso. Stating that it did not appear in the case whether the fact of the construction of the 60 miles between Port Huron to Flint had been certified by the governor to the Secretary of the Interior, it was said to be unimportant "because that certificate would only cover lands belonging to the line east of Flint." It does appear in the instant case that under date of April 13, 1874, the governor of Michigan certified to the Secretary of the Interior the completion of 60 miles of railroad between Port Huron and Flint by the Port Huron & Lake Michigan Railroad Company. That 60 miles of road was substantially on the line of definite location filed by the Port Huron & Milwaukee Company in the year 1857 in the General Land Office, and it was for the last-named company that the Secretary of the Interior, on November 1, 1864, certified to the governor of Michigan 6,428.68 acres, being the same lands subsequently conveyed, as has been stated, to the Port Huron & Lake Michigan Railroad Company by the board of control and governor of Michigan. All of said acreage, except about 97 acres, was east of Flint. The Port Huron & Lake Michigan Railroad Company acquired property rights of the Port Huron & Milwaukee Railway Company under foreclosure proceedings and mesne conveyances.

To continue the history further, it appears that in 1879 Congress, by joint resolution, released to the State of Michigan "any and all reversionary interest which may remain in the United States in such of the lands granted by the act of June 3, 1856, as were granted to aid the construction of the road from Grand Haven to Flint and thence to Port Huron." It was declared that "this release shall not in any manner affect any legal or equitable rights in said lands which have been acquired, but all such rights shall be and remain unimpaired." (20 Stat., 490.) In 1881 the Legislature of Michigan passed an act confirming the action of the Board of Control and the governor taken in 1873 in conveying the lands east of Flint to the Port Huron & Lake Michigan Railroad Company, with a proviso that nothing in the act should impair or affect any valid right or



interest theretofore acquired by any individual, corporation, or other party in said lands, or any part thereof. Any grants or conveyances which had been made by the Port Huron & Lake Michigan Railroad Company, or its officers or trustee, were likewise confirmed by said act. That act recited that the said company had constructed its road from Port Huron to Flint "upon the line contemplated by the act of Congress granting said lands to the State of Michigan."

45 The title and ownership of the plaintiff in the road from Port Huron to Flint was derived through mortgage foreclosures and consolidations of lines of railroad.

We can not escape the conclusion that the Port Huron & Lake Michigan Railroad Company acquired ownership of the lands east of Flint by the action of the board of control and the patent issued by the governor of Michigan, and upon its application therefor under a claim of right to the lands. The fact that it applied for and there was an attempted conveyance to it of lands west of Flint, or west of Owosso, and that its claim to these lands was defeated, can not be accepted as sufficient reason for holding that the conveyance of lands east of Flint was illegal or in contravention of the act of Congress. It sought the conveyance and declared it was entitled to them under the congressional grant. It accepted the conveyance in terms and proceeded to exercise control and disposition of them. A trustee of its appointment was authorized to sell them and that trustee was subsequently made a party defendant in the mortgage proceedings under which the company's properties were sold. It had sought the lands in right of having built about 60 miles of road along the contemplated line, and its acceptance of the conveyance of the lands pertaining to their "unfinished portion" of the line estops it to say the lands were not lawfully conveyed to it. We see nothing in the act of Congress or in the action of the Michigan Legislature that defeats the validity of the conveyance of these lands east of Flint. If there remained in Congress under the terms of the act of 1856 a condition subsequent, whereby they could have declared a forfeiture for any existing cause, that condition did not affect the title that was lawfully conveyed, and it was never exercised in any event.

The joint resolution by which Congress released any reversionary interest in the lands granted by the act of 1856 is broad enough to protect individuals and corporations alike who had lawfully acquired any of the lands. It was not the equivalent of a forfeiture by Congress of the lands for any of the causes contemplated by the act of 1856. The legal title to the lands had passed to the State of Michigan, and by her duly constituted authorities the title to the lands east of Flint was transferred to the railroad company in 1873. If anything further was needed to vest the title so conveyed, it was furnished by the act of the legislature of 1877. Only by judicial proceedings, properly asserted, could the Government interfere with the grant. (*Grinnell v. Railroad Co.*, 103 U. S., 739, 744.) We think that the conveyance of the lands east of Flint was valid and that the Government could not have questioned it. The joint resolution of 1879 did not do so. The attempted grant of lands west

of Flint was, as we have seen, abortive. The act of 1856 contemplates that the land should not be sold in advance of the building of the road in sections of at least 20 continuous miles. But the road had been built for 60 miles, and as to that portion the company could lawfully ask for and receive the lands pertaining to such portion. It could not, however, accept the benefits of these lands, granted by the Government for a specific purpose, and escape the burdens imposed by the act granting them. The lands were not imposed on the railroad company. It asked for them and solemnly

46 Congress and the legislature of the State. It does not lie in the mouth of the railroad company to say that it only acquired about 6,400 acres out of approximately 36,000 acres asked for, that the consideration for its assumption of the burdens of the land-grant act was entire and indivisible, and that therefore it did not assume said burden.

Where the unlawful part of the grant is separable from the lawful part it can not be held that the company receiving and retaining the lawful part should be relieved from the effect of its contract, especially where the lands received and retained were all the lands pertaining to the line of road actually completed. The company must be held to have known that it could not receive the lands west of Owosso or of Flint under a statement that it had built the road to Flint, and with a pretext that it would build to Owosso, which it never did. It would not be heard to plead its own wrong in order to escape a legal liability self-imposed. We therefore hold that the road from Port Huron to Flint was land-aided.

The next question is whether the plaintiff's compensation was subject to the deduction made by the Postmaster General in 1912.

There was a postal route from Port Huron to Flint as early as 1872. When the plaintiff acquired that portion of road in 1900, it had never been treated as land-aided, and not until after the plaintiff had carried the mails for 12 years and been paid therefor the rates fixed in the Postmaster General's readjustment orders was the question raised that the mails must be transported from Port Huron to Flint at 80 per cent of the compensation awarded roads which were not land-aided. Practically 40 years then intervened before the liability was sought to be enforced.

We do not think this case is ruled by the considerations referred to in Alabama Great Southern Railroad Company Case, 142 U. S., 615. It does not appear that there was any construction of a statute during said term of years which was changed by a construction of the same statute given in 1912. It was rather a mistake of fact than of law by which the road was exempted. Nor does the inaction of the Post Office Department during the long period furnish any estoppel. The plaintiff was chargeable with notice of the character of the road it acquired as to its being land-aided or not. In the chain of title to the properties of the Port Huron & Lake Michigan Railroad Company was the mortgage foreclosure and the fact that Bowes, the trustee to sell said lands, was made a party defendant, evidently to bring those lands under the decree of foreclosure. The public acts

of the legislature referred to the lands and to the railroad company as well. The books and records of the company itself were probably open to plaintiff's inspection. But whether it had actual notice or not of the condition, the fact is that said road was land-aided, and the deduction that was made, it seems to us, was valid under the principles decided in *Wisconsin Central Railroad Co. v. United States*, 164 U. S., 190 (27 C. Cls., 440); *Chicago, St. P. M. & O. R. R. Co. Case*, 217 U. S., 180.

It does not affirmatively appear what the value of the 6,000 acres was. It does appear that under the terms of the grant to the railroad company it took the lands on the condition that actual settlers thereon should be required to pay \$1.25 per acre. Upon this

basis, if applied to all the land, their value would be less than 47 \$10,000. There was deducted from the plaintiff's compensation over \$50,000, representing 20 per cent of its compensation on the said route from 1900 to 1912. Since that time it has received 80 per cent of the compensation on the postal route from Port Huron to Flint, which it would have received if treated as a non-land aided road. With any supposed equities presented by the facts the court can not deal, but the plaintiff's relief from the situation in which it finds itself can only be granted by Congress.

It follows that the petition should be dismissed. And it is so ordered.

Hay, Judge; Barney, Judge; and Booth, Judge, concur.

Downey, Judge, took no part in the decision of this case.

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#### V.—*Judgment of the Court.*

At a Court of Claims held in the City of Washington on the *the* Twenty-seventh day of May, A. D. 1918, judgment was ordered to be entered as follows:

The Court, upon due consideration of the premises find in favor of the defendants, and do order, adjudge, and decree that The Grand Trunk Western Railway Company, as aforesaid, is not entitled to recover and shall not recover any sum in this action of and from the defendants, the United States; and that the petition be and it hereby is dismissed: And it is further ordered, adjudged, and decreed that the defendants, the United States, shall have and recover of and from the claimant, The Grand Trunk Western Railway Company, as aforesaid, the sum of Five Hundred and Eighty-eight Dollars (\$588), the cost of printing the record in this cause in this court, to be collected by the Clerk, as provided by law.

BY THE COURT.

VI.—*Claimant's Application for and Allowance of an Appeal.*

The claimant makes application for an appeal to the Supreme Court of the United States from the judgment heretofore rendered in this case.

DUDLEY & MICHENER.

Filed June 18, 1918.

Ordered: That the above appeal be allowed as prayed for.  
June 24, 1918.

BY THE COURT.

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Court of Claims.

No. 32589.

THE GRAND TRUNK WESTERN RAILWAY COMPANY

vs.

THE UNITED STATES.

I, Sam'l A. Putman, Chief Clerk Court of Claims, certify that the foregoing are true transcripts of the pleadings in the above-entitled cause; of the argument and submission of case; of the findings of fact, conclusion of law, and opinion of the court; of the judgment of the court; of the claimant's application for, and allowance of, an appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court this June 25, 1918.

[Seal Court of Claims.]

SAM'L A. PUTMAN,  
*Chief Clerk Court of Claims.*

Endorsed on cover: File No. 26,620. Court of Claims. Term No. 534. The Grand Trunk Western Railway Company, appellant, vs. The United States. Filed June 26th, 1918. File No. 26,620.